IN THE HIGH COURTOF PUNJAB AND HARYANA, CHANDIGARH.

Arbitration Case No. 65 of 2006
Date of decision: 16.7.2007

M/s Gurmail and Company

....Petitioner.

vs.

State of Haryana and others.

..Respondents

CORAM: HON'BLE MR.JUSTI CE VIJENDER JAIN, CHIEF JUSTICE

Present: Mr. B.S.Walia, Advocate, for the petitioner.

Mr.Randhir Singh, Addl. A.G.Haryana, for the State.

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Vijender Jain, Chief Justice (Oral)
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The arbitration clause in the agreement is admitted between the parties. Learned counsel for the petitioner has contended that he has invoked the arbitration clause on 13.12.2004 but nothing has been done by the respondents.

On the other hand, learned Additional Advocate General, appearing on behalf of the State, has contended that security @`7-1/2 % of the claimed amount as stipulated in the agreement for seeking appointment of arbitrator was to be deposited but the same has not been deposited,

therefore, no arbitrator has been appointed. In the alternative, he has contended that the petitioner has earlier invoked the arbitration clause vide his letter dated 20.3.2004. However, he withdrew that letter invoking the arbitration clause as no dispute remained between the parties.

I have perused the record. From the perusal of the record I find that there is nothing on the record asking the petitioner to deposit security @ 7-1/2% of the claimed amount. It is clear that no such letter was ever sent to the petitioner. Therefore, this plea is not sustainable as the letter dated 11.12.2004 sent by the petitioner has not been replied by the respondents that in case of non deposit of security @ 7-1/2 % no arbitrator could be appointed. Keeping silence on this aspect and now raising this plea of security @ 7-1/2 % having not been deposited is after thought.

Coming to the second argument of the learned counsel for the respondents that the petitioner had invoked the arbitration clause earlier also vide his letter dated 20.3.2004. I have perused the letter dated 20.3.2004, on which reliance has been placed by the learned Additional Advocate General. In the said letter, it has been stated that at that stage he is not maintaining any grievance or dispute against the department . The words “at this stage” are very important and it has been explained to me by the learned counsel for the petitioner that at that time respondents had assured that they would amicably settle the matter but they failed to do so and in that context these words were used in the letter. In this view of the matter, the respondents have forfeited their right to supply the vacancy.

With the consent of the parties, Shri V.K.Kaushal, District Judge (Retd) is appointed as the Arbitrator. The Arbitrator shall fix his own

fee. Intimation be sent to the Arbitrator.

Parties are directed to appear before the Arbitrator on 1.9.2007 at 4 P.M.

(***VIJENDER JAIN)***
CHIEF JUSTICE

July 16, 2007
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